IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 92 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAYABEN S SHAH

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR MANISH J.SHAH FOR MR JP SHAH for Applicant.

MR MR B.B.NAYAK FOR MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 19/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the assessee, the Income-tax Appellate Tribunal, Ahmedabad Bench "A" has referred to this Court for its opinion the following questions of law under the provisions of Section 256(1) of the Income-tax Act,1961.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the capital gain arising from sale of agricultural land was liable to tax u/s.45?

If the reply to the above question is in the affirmative, whether Tribunal was right in law in holding that the assessee was not entitled to substitute the fair market value as on 1/4/1970 for the reason that from that day the agricultural land was included in the definition of 'capital asset'?"

Mr.Manish Shah, learned Advocate has appeared for the applicant assessee whereas Shri B.B.Nayak, learned Advocate has appeared for the Revenue.

2. Learned Advocates appearing for the parties have fairly submitted that the main question which has been referred to this Court has already been decided by the Hon'ble Supreme Court in the case of Singhai Rakeshkumar Vs. Union of India and others, reported in 247 I.T.R. 150. The said question has been replied in the affirmative i.e. against the assessee and in favour of the Revenue.

3. As the first question has been replied in the affirmative, the second question is also replied in the affirmatrive i.e. against the assessee and in favour of the Revenue.

4. This Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta,J

m.m.bhatt